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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

IN RE: SOCIAL MEDIA ADOLESCENT  
ADDICTION/PERSONAL INJURY PRODUCTS  
LIABILITY LITIGATION

THIS DOCUMENT RELATES TO:

## ALL ACTIONS

MDL No. 3047

Case No. 4:22-md-03047-YGR-PHK

Honorable Yvonne Gonzalez Rogers

**SUPPLEMENTAL BRIEFING ON STATE-LAW STANDARDS FOR CLAIMS OF NEGLIGENCE MISREPRESENTATION IN SUPPORT OF MARK ZUCKERBERG'S MOTION TO DISMISS THE PERSONAL INJURY PLAINTIFFS' CLAIMS**

Pursuant to Case Management Order Number 11, and in support of the motion to dismiss the claims asserted against him personally by various personal injury plaintiffs, Mark Zuckerberg hereby submits a listing of cases on the state-law standards for negligent misrepresentation by omission in the 14 states listed in the Court's Order.

### **States that Do Not Recognize the Tort of Negligent Misrepresentation by Omission**

| State          | Applicable Law  |
|----------------|---|
| California     | <i>UMG Recordings, Inc. v. Global Eagle Entertainment, Inc.</i> , 117 F. Supp. 3d 1092, 1111 (C.D. Cal. 2015) (“negligent misrepresentation requires a positive assertion . . . ; an omission or an implied assertion will not suffice”) (quotation and citation omitted).  |
| Colorado       | <p><i>Craig Hospital v. Tyson Foods, Inc.</i>, 2019 WL 5095737, at *6-7 (D. Colo. July 22, 2019) (“conclud[ing] that the Colorado Supreme Court would require that a negligent misrepresentation claim be grounded in affirmative statements”) (collecting cases).</p> <p><i>Martin v. Chinese Children Adoption International</i>, 2020 WL 6585796, at *13-14 (D. Colo. Nov. 10, 2020) (same) (collecting cases).</p>  |
| Georgia        | <i>Intelicig USA, LLC v. CN Creative Limited</i> , 2017 WL 11634374, at *7 n.6 (N.D. Ga. Mar. 6, 2017) (“cases strongly suggest that a negligent misrepresentation claim requires an affirmative representation”).  |
| Maryland       | <p><i>Shaw v. Brown &amp; Williamson Tobacco Corp.</i>, 973 F. Supp. 539, 549-50 (D. Md. 1997) (“the Court is aware of no case in Maryland where a judgment for negligent misrepresentation was upheld in the absence of such an affirmative representation”).</p> <p><i>Lloyd v. General Motors Corp.</i>, 916 A.2d 257, 273 (Md. Ct. App. 2007) (a claim for negligent misrepresentation requires that “the defendant . . . negligently asserts a false statement”).</p>                                    |
| North Carolina | <p><i>Bonham v. Wolf Creek Academy</i>, 767 F. Supp. 2d 558, 570 (W.D.N.C. 2011) (“negligent omissions . . . as opposed to negligent misrepresentations cannot form the basis of a claim for negligent misrepresentation under North Carolina law”) (emphasis in original).</p> <p><i>DeGorter v. Capitol Wealth, Inc.</i>, 2016 WL 3944086, at *10 n.2 (N.C. Sup. Ct. 2016) (dismissing claim for negligent misrepresentation “with prejudice to the extent the claim is based on negligent omissions”).</p> |
| Ohio           | <i>Textron Financial Corp. v. Nationwide Mutual Insurance Co.</i> , 684 N.E.2d 1261, 1269 (Ohio Ct. App. 1996) (“Negligent misrepresentation does not lie for omissions; there must be some affirmative false statement.”).   |

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| 1<br>2<br>3<br>4<br>5<br>6       | <p>Texas</p> <p><i>Tijerina v. Volkswagen Grp. of Amer.</i>, 2023 WL 6890996, at *35 (D.N.J. Oct. 19, 2023) (“affirmative representation is required to assert a negligent misrepresentation claim under Texas . . . law”).</p> <p><i>But see Baker v. Great Northern Energy, Inc.</i>, 64 F. Supp. 3d 965, 979 (N.D. Tex. 2014) (“to the extent [plaintiff’s] negligent misrepresentation claim is based on Defendants’ alleged omissions, these assertions also fail, because ‘in Texas, non-disclosures cannot be negligent unless there is a duty to disclose’”) (quoting <i>Coburn Supply Co. v. Kohler Co.</i>, 342 F.3d 372, 377 (5th Cir. 2003)).</p> |
| 7<br>8<br>9<br>10<br>11          | <p>Virginia</p> <p><i>Self Insured Services Co. v. Panel Systems, Inc.</i>, 352 F. Supp. 3d 540, 555 (E.D. Va. 2018) (“negligent misrepresentation” is what “Virginia courts [] call constructive fraud”).</p> <p><i>Northern Virginia Eye Institute, P.C. v. Cynosure, LLC</i>, 2021 WL 1554887, at *4 (W.D. Va. Apr. 20, 2021) (concluding that “there is no claim for ‘constructive fraud by omission’ in Virginia”).</p>  |
| 12<br>13<br>14<br>15<br>16<br>17 | <p>Wisconsin</p> <p><i>Ramsden v. Farm Credit Services of North Central Wisconsin ACA</i>, 590 N.W.2d 1, 8 (Wis. Ct. App. 1998) (“A claim for negligent misrepresentation . . . requir[es] that . . . defendant made a factual representation”).</p> <p><i>But see Betty Andrews Revocable Trust v. Vrakas/Blum, S.C.</i>, 2008 WL 4810769, at *4 n. 12 (Wis. Ct. App. Nov. 6, 2008) (whether a claim for negligent misrepresentation can arise from a failure to disclose is an open question in Wisconsin) (citing <i>Kaloti Enterprises, Inc. v. Kellogg Sales Co.</i>, 699 N.W.2d 205, 212 n.3 (Wis. 2005)).</p>  |

## **States that Recognize the Tort of Negligent Misrepresentation by Omission**

| State          | Applicable Law   |
|----------------|--|
| Arizona        | <p><i>Allstate Life Insurance Co v. Robert W. Baird &amp; Co., Inc.</i>, 756 F. Supp. 2d 1113, 1166 (D. Ariz. 2010) (permitting claim for negligent misrepresentation based on “negligent omission of facts necessary to make a past or present assertion not misleading”).</p> <p><i>In re Arizona Theranos, Inc., Litigation</i>, 308 F. Supp. 3d 1026, 1055 (D. Ariz. 2018) (“[A] claim of negligent misrepresentation fails absent an assertion of facts to show that the party making the representation owed a duty to a party who justifiably relied on the statement.”) (quotation and citations omitted).</p> |
| Connecticut    | <p><i>Office Furniture Rental Alliance, LLC v. Liberty Mutual Fire Insurance Co.</i>, 981 F. Supp. 2d 111, 120 (D. Conn. 2013) (“A negligent misrepresentation claim may be based on the defendant’s omissions. . . . Such a cause of action based on omission arises only if the defendant had a duty to disclose the omitted information[.]”).</p>   |
| New York       | <p><i>Ellington Credit Fund Ltd. v. Select Portfolio Servicing, Inc.</i>, 837 F. Supp. 2d 162, 201 (S.D.N.Y. 2011) (“a breach of a duty to disclose can constitute an element of various torts such as . . . negligent misrepresentation based on omission”).</p> <p><i>LBBW Luxemburg S.A. v. Wells Fargo Secs. LLC</i>, 10 F. Supp. 3d 504, 525 (S.D.N.Y. 2014) (a negligent misrepresentation claim requires that “the parties stood in some special relationship imposing a duty of care on the defendant to render accurate information”) (quotation and citation omitted).</p>                                   |
| Pennsylvania   | <p><i>Elbeco Inc. v. National Retirement Fund</i>, 128 F. Supp. 3d 849, 850-51 (E.D. Pa. 2015) (“Common law claims of negligent misrepresentation by omission likewise require a duty to disclose.”).</p>  |
| South Carolina | <p><i>Richardson v. Munninghoff, Lange &amp; Co.</i>, 2010 WL 3420204, at *5, 7 (D.S.C. Aug. 23, 2010) (referring to “evidence of negligent omission” but explaining that “[p]laintiff is limited to reliance on alleged omissions of information which the[ ] Defendants had a duty to disclose”).</p> <p><i>Lampman v. DeWolff Boberg &amp; Associates, Inc.</i>, 319 Fed. App’x 293, 299 (4th Cir. 2009) (“Under South Carolina law, the suppression of a material fact which one is duty bound to disclose is equivalent to a false representation.”) (cleaned up and citation omitted).</p>                       |

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Respectfully submitted,

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